

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS

STATE OF ARKANSAS

FILED
at _____ o'clock _____ m

VS.

Nos. CR 93-516
93-517
93-518

SEP 27 1993

LAVADA NORRIS, CLERK

DAMIEN ECHOLS, JESSE MISSKELLEY,
and JASON BALDWIN

DEFENDANTS

ATTORNEY GENERAL'S ENTRY OF APPEARANCE
AND
STATE OF ARKANSAS' MEMORANDUM REGARDING
THE PAYMENT OF INDIGENT DEFENSE FEES

Comes now the Attorney General on behalf of the State for a limited entry of appearance, and states:

By way of letter received September 7, 1993, from defense attorney Paul Ford, the Attorney General was informed of a hearing to be held September 27, 1993, regarding the issue of who should pay the attorneys' fees in this criminal case.

The Attorney General has come forward only because the Deputy Prosecuting Attorney has expressed a conflict in representing the State in that he also represents Crittenden County.

Services Rendered Before July 1, 1993

The State of Arkansas concedes it is responsible for the payment of reasonable attorneys' fees awarded by the circuit court for services rendered from the date the appointments were made in June until July 1, 1993. The State accepts this

responsibility based on the Arkansas Supreme Court's ruling in State v. Independence County, et al., 312 Ark. 472 (1993).

Services Rendered After June 30, 1993

Act 1193 of 1993 places the responsibility for paying private attorneys representing indigent Defendants on the county wherein the crime was committed. Section 8 of the Act specifically states:

When private attorneys or trial public defenders from another area are appointed to represent an indigent person, the attorneys or trial public defenders shall be paid by the county wherein the crime was committed. [emphasis added].

Act 1193 contained an emergency clause making the effective date of the Act July 1, 1993. Thus, services rendered by the defense attorneys after June 30, 1993 should be paid by Crittenden County.

Officials from the County may argue that "the date of appointment", rather than "the date the services were rendered", should determine the effective date of the new Act. However, relevant case law suggests that the deciding factor is the date the services were rendered, not the date of appointment.

In Simmons v. Lockhart, 931 F.2d 1226 (8th Cir. 1991) a defense attorney had performed services both before and after the effective date of the Anti-Drug Abuse Act. Prior to the Anti-Drug Abuse Act, the Criminal Justice Act (18 U.S.C. §3006A) provided for hourly ceilings -- allowing \$40.00 per hour for out-of-court time, and up to \$60.00 per hour for in-court

time. Whereas, the Anti-Drug Abuse Act (21 U.S.C. §848) provides that the attorney's fee award just be "reasonable."

The defense attorney in Simmons sought retroactive application of the more beneficial fee statute, but there was no evidence showing Congress's intent that the new law should be applied retroactively. In determining how the defense attorney would be paid, Justice Arnold of the Eighth Circuit Court of Appeals looked at when the services were rendered by the defense attorney. Fees for time spent on the criminal case prior to the effective date of the Anti-Drug Abuse Act were figured at the hourly ceilings prescribed by the Criminal Justice Act. And, fees for time spent after the effective date of the Anti-Drug Abuse Act were figured under the reasonable standard.

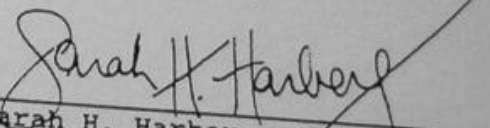
In conclusion, the fair and reasonable approach applied in Simmons should be applied to the situation at bar.

WHEREFORE, based on the foregoing reasons, the attorneys' fees should be paid according to when the actual services were rendered.

Respectfully submitted,

WINSTON BRYANT
ATTORNEY GENERAL

By:


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CERTIFICATE OF SERVICE

I, Sarah H. Harberg, Assistant Attorney General, certify this 27th day of September, 1993, that a copy of the foregoing has been served by delivering a copy of same, to the following:

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